APPENDIX TO BRIEF.

Federal Employers' Liability Act, Title 45, Chapter 2.

Sec. 51

"Liability of common carriers by railroad, in interstate or foreign commerce, for injuries to employees from negligence. Every common carrier by railroad while engaging in commerce between any of the several States or Territories, or between any of the States and Territories, or between the District of Columbia and any of the States or Territories, or between the District of Columbia or any of the States or Territories and any foreign nation or nations, shall be liable in damages to any person suffering injury while he is employed by such carrier in such commerce, or, in case of the death of such employee, to his or her personal representative, for the benefit of the surviving widow or husband and children of such employee; and, if none, then of such employee's parents; and, if none, then of the next of kin dependent upon such employee, for such injury or death resulting in whole or in part from the negligence of any of the officers, agents, or employees of such carrier, or by reason of any defect or insufficiency, due to its negligence, in its cars, engines, appliances, machinery, track, roadbed, works, boats, wharves or other equipment. (Apr. 22, 1908, c. 149, Sec. 1, 35 Stat. 65.)"

Sec. 53

"Contributory negligence; diminution of damages. In all actions hereafter brought against any such common carrier by railroad under or by virtue of any of the provisions of this chapter to recover damages for personal injuries to an employee, or where such injuries have resulted in his death, the fact that the employee may have been guilty of contributory negligence shall not bar a recovery, but the damages shall be diminished by the jury in proportion to

the amount of negligence attributable to such employee: Provided, That no such employee who may be injured or killed shall be held to have been guilty of contributory negligence in any case where the violation by such common carrier of any statute enacted for the safety of employees contributed to the injury or death of such employee. (Apr. 22, 1908, c. 149, Sec. 3, 35 Stat. 66.)"

Sec. 54

"**Assumption of risks of employment.** In any action brought against any common carrier under or by virtue of any of the provisions of this chapter to recover damages for injuries to, or the death of, any of its employees, such employee shall not be held to have assumed the risks of his employment in any case where the violation by such common carrier of any statute enacted for the safety of employees contributed to the injury or death of such employee. (Apr. 22, 1908, c. 149, Sec. 4, 35 Stat. 66.)"

Sec. 58

"**Duty or liability of common carriers and rights of employees under other Acts not impaired.** Nothing in this chapter shall be held to limit the duty or liability of common carriers or to impair the rights of their employees under any other Act or Acts of Congress. (Apr. 22, 1908, c. 149, Sec. 8, 35 Stat. 66.)"

Safety Appliance Act, Title 45, U. S. Code, Chapter 1.

Sec. 11

"**Safety appliances required for each car; when hand brakes may be omitted.** It shall be unlawful for any common carrier subject to the provisions of this chapter to haul, or permit to be hauled or used on its line, any car subject to the provisions of this chapter not equipped with

appliances herein provided for, to-wit: All cars must be equipped with secure sill steps and efficient hand brakes; all cars requiring secure ladders and secure running boards shall be equipped with such ladders and running boards, and all cars having ladders shall also be equipped with secure handholds or grab irons on their roofs at the tops of such ladders; Provided, That in the loading and hauling of long commodities, requiring more than one car, the hand brakes may be omitted on all save one of the cars while they are thus combined for such purpose (Apr. 14, 1910, c. 160, Sec. 2, 36 Stat. 298.)"

Sec. 12

"**Safety appliances, as designated by commission, to be standards of equipment; modification of standard height of drawbars.** The number, dimensions, location, and manner of application of the appliances provided for by sections 4 and 11 of this chapter as designated by the Interstate Commerce Commission shall remain as the standards of equipment to be used on all cars subject to the provisions of this chapter, unless changed by an order of said Interstate Commerce Commission, to be made after full hearing and for good cause shown; and failure to comply with any such requirement of the Interstate Commerce Commission shall be subject to a like penalty as failure to comply with any requirement of this chapter. Said commission is hereby given authority, after hearing, to modify or change, and to prescribe the standard height of drawbars and to fix the time within which such modification or change shall become effective and obligatory, and prior to the time so fixed it shall be unlawful to use any car or vehicle in interstate or foreign traffic which does not comply with the standard now fixed or the standard so prescribed, and after the time so fixed it shall be unlawful to use any car or vehicle in interstate or foreign traffic which does not com-

ply with the standard so prescribed by the commission. (Apr. 14, 1910, c. 160, sec. 3, 36 Stat. 298.)"

Sec. 13

"Penalty for using car not equipped as provided; hauling car for repairs where equipment becomes defective; liability for death or injury of employee; use of chains instead of drawbars. Any common carrier subject to this chapter using, hauling or permitting to be used or hauled on its line, any car subject to the requirements of this chapter not equipped as provided in this chapter, shall be liable to a penalty of $100 for each and every such violation, to be recovered as provided in section 6 of this chapter: Provided, That where any car shall have been properly equipped, as provided in this chapter, and such equipment shall have become defective or insecure while such car was being used by such carrier upon its line of railroad, such car may be hauled from the place where such equipment was first discovered to be defective or insecure to the nearest available point where such car can be repaired, without liability for the penalties imposed by this section or section 6 of this chapter, if such movement is necessary to make such repairs and such repairs cannot be made except at such repair point; and such movement or hauling of such car shall be at the sole risk of the carrier, and nothing in this section shall be construed to relieve such carrier from liability in any remedial action for the death or injury of any railroad employee caused to such employee by reason of or in connection with the movement or hauling of such car with equipment which is defective or insecure or which is not maintained in accordance with the requirements of this chapter; and nothing in this proviso shall be construed to permit the hauling of defective cars by means of chains instead of drawbars, in revenue trains or in association with other cars that are commercially used, unless

such defective cars contain livestock or 'perishable' freight. (Apr. 14, 1910, c. 160, Sec. 4, 36 Stat. 299.)"

Sec. 14

"Liability for using car with defective equipment, except as specified. Except that, within the limits specified in the preceding section of this chapter the movement of a car with defective or insecure equipment may be made without incurring the penalty provided by the statutes, but shall in all other respects be unlawful, nothing in sections 11, 12, and 13 of this chapter shall be held or construed to relieve any common carrier, the Interstate Commerce Commission, or any United States attorney from any of the provisions, powers, duties, liabilities, or requirements heretofore set out in this chapter; and, except as aforesaid, all of such provisions, powers, duties, requirements, and liabilities shall apply. (Apr. 14, 1910, c. 160, Sec. 5, 36 Stat. 299.)"

Sec. 15

"Enforcement by commission. It shall be the duty of the Interstate Commerce Commission to enforce the provisions of this chapter as to equipment of each car with safety appliances and all powers heretofore granted to said commission are hereby extended to it for the purpose of such enforcement. (Apr. 14, 1910, c. 160, Sec. 6, 36 Stat. 299.)"

Sec. 16

"Applications of provisions to common carriers and vehicles subject to 'Safety Appliance Acts'. The provisions of sections 11, 12, 13, 14 and 15, as to the equipment of cars with the designated safety appliances apply to every common carrier and every vehicle subject to what are commonly known as the 'Safety Appliance Acts' set out in the first nine sections of this chapter. (Apr. 14, 1910, c. 160, Sec. 1, 36 Stat. 298.)"

Missouri Supreme Court Rules.

Rule 21. Motions for Rehearing. Motions for rehearing must be accompanied by a brief statement of the reasons for a reconsideration of the cause, and must be founded on papers showing clearly that some question decisive of the case, and duly submitted by counsel, has been overlooked by the court, or that the decision is in conflict with an express statute, or with a controlling decision to which the attention of the court was not called through the neglect or inadvertence of counsel, and the question so submitted by counsel and overlooked by the court, or the statute with which the decision conflicts, or the controlling decision to which the attention of the court was not called, as the case may be, must be distinctly and particularly set forth in the motion, otherwise the motion will be disregarded. Such motion must be filed within ten days after the opinion of the court shall be delivered, and notice of the filing thereof must be served on the opposite counsel. After a cause has been once reheard and the motion for rehearing overruled either in division or En Banc no further motion for rehearing or motion to set aside the order overruling the motion for rehearing, by the same party, will be entertained by the court or filed by the clerk.

Rule 24. Transfers to Court En Banc. A motion to transfer a cause under the provisions of the Constitution from either division to Court En Banc must be filed within ten days after the final disposition of the cause by the division, and notice of such motion shall be given as provided in Rule 23.

Provisions of Missouri Constitution.

Section 1 of the Amendment of 1890 to Article 6 of the Constitution of Missouri, which increased the number of the judges from five to seven, created the two divisions, and defines the jurisdiction of each division, contains the following:

> "**Provided,** That a cause therein may be **transferred to the court as provided in section four of this amendment.** The division of business of which said divisions have concurrent jurisdiction shall be made as the Supreme Court may determine. A majority of the judges of a division shall constitute a quorum thereof, and all orders, judgments and decrees of either division, as to causes and matters pending before it, shall have the force and effect of those of the court."

Section 4 of the amendment of 1890, mentioned in Section 1 of the Amendment just quoted, is as follows:

> "Sec. 4. **Case transferred to court in banc, when.**— When the judges of a division are equally divided in opinion in a cause, or **when a judge of a division dissents** from the opinion therein, or **when a federal question is involved, the cause, on the application of the losing party, shall be transferred to the court** for its decision; or when a division in which a cause is pending shall so order, **the cause shall be transferred** to the court for its decision." (Emphasis ours.)